BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/BM/LD/2022-23/16301]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995; UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of

Motilal Oswal Financial Services Limited

(SEBI Registration No. : INZ000158836 & **NSDL**-IN-DP- 16-2015)

In the matter of **Motilal Oswal Financial Services Limited**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), conducted a comprehensive inspection of M/s. Motilal Oswal Financial Services Limited (hereinafter referred to as **"Noticee/Motilal"**) w.r.t. its Stock Broking and Depository Participants (hereinafter referred to as '**DP**') activities from August 19, 2019 to September 06, 2019. The period covered in the inspection was from April 01, 2018 to August 31, 2019 (hereinafter referred to as '**Inspection Period**'). Noticee is registered as Stock Broker with registration no INZ000158836.

2. The findings/observations made during the course of inspection were communicated to the Noticee by SEBI vide letter dated April 30, 2020. After examining the reply submitted by the Noticee vide letter dated June 11, 2020 it has been alleged that the Noticee violated various provisions of Securities Laws and applicable SEBI circulars. The extracts of the violation alleged to have been

committed by the Noticee and the corresponding provisions of securities laws are given in the tabulation below:

Sl no.	Alleged violations	Regulatory provisions
1.	***Mis-utilization of client's funds*** In many instances, the value of 'G' was negative thus indicating that the funds of the credit balance clients have been utilised either for settlement obligations of debit balance clients or for the Noticee's own purposes.	*Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*
2.	**Incorrect reporting / Short collection of Margin** There was incorrect margin reported to Exchange in F& O segment, wherein there was a shortfall in certain instances amounting to Rs. 16.84 Crs.	*SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011.*
3.	**Clients Funding beyond stipulated time :** Funding was done to certain clients beyond T+2+5 days	*Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017*
4.	**Discrepancies in CKYC Process** In case of several clients CKYC details were not uploaded in CERSAI portal.	*SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 read with SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016.*

5.	**<u>Non-maintenance of evidence for client order placement</u>** In several instances the procedure of keeping evidence of the client placing orders through telephone was not followed.	*Clause III & IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.*
6.	**<u>Incorrect reporting of Weekly Enhanced Supervision Data</u>** There was incorrect reporting of the data towards weekly monitoring of client funds for i. Collateral deposited with exchanges in the form of Cash and Cash equivalents, ii. Collateral deposited with Clearing Member in the form of Cash and Cash equivalents, iii. Total Credit balance of all clients iv. Total Debit balance of all clients	*Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.*

	v. Margin utilized for positions of Credit Balance Clients vi. Free / unblocked collateral deposited with Clearing Corporation vii. Free / unblocked collateral deposited with Clearing Member	

3. SEBI initiated adjudication proceedings against Noticee in terms of Section 23D of the Securities Contracts Regulation Act (hereinafter referred to as "SCRA") and Section 15HB of the Securities and Exchange Board of India (hereinafter referred to as "SEBI Act"), for the alleged violations of the relevant provisions as stated above.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated September 13, 2021 the undersigned was appointed as Adjudicating Officer (hereinafter referred to as **'AO'**) under Section 19 of the SEBI Act, read with Section 15-I (1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, (hereinafter referred as the SEBI Rules) and under Section 23-I of the SC(R)A read Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred as the SC (R) Rules), to inquire into and adjudge under the provisions of Section 23 D of SC(R)A & Section 15HB of the SEBI Act, 1992, the aforesaid alleged violations by Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated November 01, 2021 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show

cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon Noticee under Section 23D of SCRA & Section 15HB of the SEBI Act, 1992 for the aforesaid violations alleged to have been committed by Noticee as enumerated under paragraph 2.

6. The SCN was sent to Noticee through Speed Post AD and email on November 01, 2021 and was duly served upon Noticee.
7. Vide letter dated November 29, 2021, Noticee sought an extension of 4 weeks' time from the date of their letter for submitting its reply i.e December 28, 2021. The request of Noticee was acceded to and Noticee was requested to submit its reply on or before December 28, 2021. The Noticee replied on December 28, 2021 .
8. The Noticee's reply is produced below :

I. <u>Mis-utilization of client's funds</u>

<u>Reply of Noticee:</u>

With regards to the allegation that MOFSL has mis-utlilised client's funds, we would like to submit as under :

<u>Units of Reliance MFs not considered</u> :

(i) While calculating the value of "G", the inspecting team has failed to consider the amount held as Mutual Fund Units viz. Reliance Medium Term Fund Direct Plan (later known as, Nippon India Corporate Bond Fund) and Reliance Banking & PSU Debt Direct Growth (later known as, Nippon India Banking and PSU Debt Fund). When we consider the amount invested in the said MF units, the value of "G" is positive and there is no shortage of funds.

(ii) As a matter of fact, while verifying the calculation of "G" for one of the date (i.e for December 30, 2016), NSE had accepted the units of Reliance MF schemes and did not raise any adverse/negative observation in its final observation report. NSE email on the preliminary query and final observation where the referred query was expunged is enclosed as Annexure – "1" (collectively).

(iii) In our humble submission, the revised (and correct) calculation of the value of "G" after consideration of the Reliance MFs is as under :

Table No. 2						
Sr. No.	*Date*	*Value of "G" as per SEBI's investigating team*	*FO Segment – MF**	*FO Segment –MF**	*Currency segment – MF**	*Revised G Calculation (rounded-off)*
			Reliance MFs units not considered by the inspecting team			
1	*07-May-18*	*(1133008744)*	*395400511*	*1461808721*	*97886250*	*822086738*
2	*08-May-18*	*(1041968818)*	*395718613*	*1462971656*	*97965000*	*914686450*
3	*26-Jul-18*	*(2262024608)*	*401444444*	*1481578609*	*99382500*	*(279619055)^ explained below*
4	*06-Aug-18*	*(793854740)*	*402504784*	*1486230347*	*99645000*	*1194525390*
5	*31-Aug-18*	*(1457743970)*	*404413395*	*1490882085*	*100117500*	*537669010*
6	*17-Jan-19*	*(1006982132)*	*417561602*	*1544377074*	*103372500*	*1058329044*
7	*29-Mar-19*	*(1747290511)*	*544798122*	*1623190809*	*-*	*420698421*
8	*01-Apr-19*	*(1464340465)*	*530458544*	*1580428045*	*-*	*646546123*

9	*09-Apr-19*	*(1799628984)*	*531384532*	*1580428045*	-	*312183593*
10	*10-Apr-19*	*(1429743390)*	*531516816*	*1581590980*	-	*683364405*
11	*11-Apr-19*	*(1004541851)*	*531649099*	*1581590980*	-	*1108698228*
• *Reliance Medium Term Fund Direct Plan Growth Plan – Growth Option Growth (INF204K01C15)*						
# *Reliance Banking and PSU Debt Direct Growth Fund*						
^ On July 26, 2018, deficit as per SEBI SCN is Rs. 226.20 Cr. Once we consider the value of reliance MFs, the said deficit comes down to Rs. 27.96 cr. In this regard, we would like to clarify that Rs. 50 crores was transferred from client bank account for subscription of UTI Mutual Fund based on which UTI units were allotted on the same day in demat account 120190005837578, tagged as MOFSL Client demat Account. These mutual funds (UTI Liquid Cash Plan Direct Plan Growth) were placed with clearing member under cash component on very next day i.e 27th July 2018. The said mutual funds from a part of cash component as per the Circular issuedby NCCL. Thus, we confirm that Rs. 50 cores was available with trading member in the form of cash equivalent MF in client demat account of MOFSL on aforementioned date. Copy of the Bank Statement, DP Statement (dated July 26, 2018) & Clearing member statement as on July 27, 2018 depicting above transactions and the same is marked as Annexure -2. Accordingly, there is no shortage of client funds on any of the 11 dates.						

(iv) In order to substantiate our position, we are enclosing the following proof(s), with the present response :

(a) Detailed calculation / computation of the value of "G' is enclosed as Annexure – "3'.

(b) Certificate from a Chartered Accountant / Auditor (viz, Aneel Lasod and Associates), re-verifying the value of "G" is enclosed as Annexure –"4".

Normal market practice to maintain Liquid / Debt Funds with the Clearing Member:

(v) We would like to submit that the investment in Reliance MFs was made in August – 2016 i.e prior to the coming into force of the Enhanced Supervision Circular. At the relevant point of time, the Circular dated March 11, 2015 (issued by the NSE Inspection Department) specified that creditor funds can be maintained as under:

" Members are advised to ensure that the funds & securities available in the client bank/s and client beneficiary account/s together with balances available with clearing Member and funds with clearing corporation are not less than the funds and securities payable to the client at all times."

(vi) In our humble submission, the aforesaid Circular did not mention the 'form' in which funds have to be maintained and merely directs the trading members to maintain adequate funds with the Clearing Corporation (CC)/Clearing Member (CM). Hence, it was a market practice amongst participants to maintain/hold the funds in liquid/debt MFs. For the same reason the units of Reliance MFs were maintained with our Clearing Member, which was duly accepted by them as per the regulatory norms and normal market practice. It is also pertinent to mention that after the above circular Noticee stopped investing in MF units forming part of non cash component.

<u>Units of Reliance MFs were liquid and available for redemption at all points in time</u>:

(vii) Details of investment in Reliance MFs is as under :

(viii) Table No.3

Name of Mutual Fund ->	**Reliance Medium Term Fund Direct Plan**	**Reliance Banking & PSU Debt Direct Growth**
Date of Investment	August 29, 2016	August 22, 2016 and August 30, 2016
Date of Redemption/Exit	May 14, 2019	September 3, 2019
Type of Scheme	Open Ended	Open Ended

(viii) Both the MFs were liquid and they invested the money into safe instruments. At the relevant point in time, the assets allocation was as under :

(ix) Table No. 4

Name of Mutual Fund ->	**Reliance Medium Term Fund Direct Plan**	**Reliance Banking & PSU Debt Direct Growth**
Corporate Bond	67.31%	81.97%
Certificate of Deposit	10.90%	12.88%
State Government Bond	7.53%	1.70%
Commercial Paper	5.75%	-

Zero Coupon Bond	4.01%	0.49%
Cash & Other Receivables	4.50%	3.35%
Total	**100.00%**	**100%**
*Source: Fact Sheet of August -2016, as published by the Mutual Fund		

(ix)Pertinently, the MFs had invested in reputed Commercial Papers like Kotak Mahindra Bank, National Housing Bank, NABARD etc. and Corporate Bonds like Tata Motors, HDFC, Power Finance Corporation, LIC Housing Finance, L&T Finance etc. as well as State Government Bonds. The rating profile was of these instruments was also high :

Table No. 5		
Name of Mutual Fund ->	**Reliance Medium Term Fund Direct Plan***	**Reliance Banking & PSU Debt Direct Growth***
AAA/SOV/A1+CASH and Other Receivables	73.10%	100%
AAA+	16.27%	-
AA	2.90%	-
AA-	5.96%	-
A+/A/A-/A1	1.77%	-
Total	**100.00%**	**100%**
*Details as on August -2016 (when the funds were invested)		

(x) In view of the aforesaid, we respectfully submit that the investment in Reliance MFs was safe / liquid since it predominately consisted of debt and money market instruments of various maturities issued by Banks. Public Sector Undertakings (PSU), Public Financial Institutions (PFI) etc.

(xi) Pertinently, we have exited both the schemes in May-2019 & September -2019 and post-2019, there has not been a single investment in any such MF scheme forming part of non cash component. As per statutory requirements we are uploading creditor blackness vis-s vis funds with CC/CM & bank balances on weekly basis and we have never received any misutilised on observation from any of the Exchanges.

Compliance with 1993 SEBI Circular :

(xii) The Clause 1 of the 1993 Circular requires a trading member to withdraw money from clients' accounts 'only when money is required for payment to or on behalf of clients or towards payment of debt due to the broker from the client or money drawn on client's authority, or money in respect of which there is a liability of clients to the member, provided that the money so drawn shall not in any case exceed the total

of the money so held for the time being for such each client'. The 1993 Circular further mandates the broker to maintain separate and distinct accounts for fund and securities of the clients. It is respectfully submitted that MOFSL has complied all the time with stated requirements and this issue was also explained to the inspection team in detail. MOFSL has never mis-ultilized any funds from the client balances and we have always maintained client accounts and own account separately and segregation of client funds & securities was always ensured.

(xiii) MOFSL maintains separate ledgers and accounts for each client. Further MOFSL maintains separate client bank account for holding client funds. Money received on account of each client is always reflected correctly in client ledgers. The Show Cause Notice does not highlight a single instance where it has withdrawn funds from clients account for purposes other than those permitted other than making a bald allegation. Till date, not a single complaint is filed by any client against MOFSL, in this regard.

Compliance with Enhanced Supervision Circular :

(xiv) The Enhanced Supervision Circular (applicable w.e.f July 01, 2017) introduced a different method/formula for arriving at the value of "G". We respectfully submit that MOFSL has followed the working of Enhanced Supervision Circular, in letter and spirit from the date of its applicability. MOFSL has robust systems in place to ensure all the compliance requirements implemented by SEBI and Exchanges as on date. A certificate from a Chartered Accountant elucidating the calculation of "G" since October-2019 (post-inspection period) can be provided by the MOFSL should the learned Adjudicating Officer so directs.

(xv) As per statutory requirements we are uploading Creditor balances vi-z-a-viz funds with CC/CM on weekly basis and we have never received any misutlisization observations from any of the exchanges.

(xvi) In view thereof, we deny the alleged violation of 1993 SEBI Circular and Enhanced Supervision Circular.

II. <u>Incorrect reporting / Short collection of Margin :</u>

<u>Reply of Noticee</u>

With regards, to the allegation that MOFSL has incorrectly reported margin of three (3) clients (on a single day each), we would like to submit as under :

(i) *As per the extant regulations, MOFSL had a practice of segmental reporting of margin of the clients. Also, at the start of inspection, MOFSL had provided detailed process note on margin reporting to exchanges wherein we had informed the inspecting team that we followed a process of segmental reporting (in derivative segment), as per the extant norms. The said practice was consistently followed by MOFSL across all clients till the time relevant circular dated June 27, 2018 was in practice.*

(ii) *MOFSL has system driven margin reporting process across all Exchanges where ledger balance, Collateral valuation, reading of POA balances etc. is considered by the system, as per pre-defined formula. The automated system considers balances, as available, in particular segment and reported to the exchange.*

(iii) *Accordingly, the available balance (s) in derivative segment was reported to exchanges as a part of margin reporting. While calculating margin shortage, inspecting team (NSE) has considered client balances at consolidated level (including cash segment debits) and hence it appears that the query has arisen. However, the said approach adopted by inspecting team is lopsided since at the relevant time NSE's Circular itself gave an option to trading members to either report the 'segment-wise 'balance or 'consolidated' balance.*

(iv) *In other words, MOFSL's practice of reporting the margin was adopted in terms of the NSE Circular dated June 27, 2018 ("Margin Reporting Circular") wherein an option was given to trading member to either use segment wise balances or consolidated balances (all segments) for margin reporting purpose. The paragraph no. 5 of said circular read as under :*

"Members can use segment-wise balances or consolidated (all segments) financial balances of the Exchange for the purpose of collection and reporting Margin /MTM losses, however the practice followed shall be followed consistently for a minimum period of 1 financial year."

Copy of the NSE's Margin Reporting Circular is enclosed as Annexure –'5'.

(v) *It was only on July 3, 2019 (after almost a year of Margin Reporting Circular), the NSE came out with another clarificatory /superseding Circular ("Superseding*

Circular") on interoperability among clearing corporations. The Superseding Circular mandated the trading members that while reporting the margin, they should consider 'consolidated' fund balances across all segments & exchanges. The relevant paragraph read as under ;

"Members shall consider the free & unencumbered consolidated balance across all segments and Exchanges (including Commodities but excluding balances in the client's Margin Trading (MTF) account) for the purpose of collection & reporting Margin / MTM losses of the client. This shall be in supersession to point no. 5 of Annexure-A of NSE circular NSE/INSP/38154 dated June 27, 2018."

Copy of the NSE's Superseding Circular is enclosed as Annexure –"6".

(vi) We humbly submit that all the three (3) instances highlighted by the inspection team are from a period when Margin Reporting Circular dated June 27, 2018 was in force. In other words, while calculating the margin for the three clients, the inspecting team has applied the Superseding Circular which was applicable at a later date :

Table No.6

Sl. No.	**Name of the client (Client Code)**	**Date considered by the NSE / inspecting team**	**Applicability of the Superseding Circular (w.e.f July 29, 2019)**
1.	Ganesh Trading Investment (RSH556)	April 24, 2019	Not Applicable
2.	Vikas Jain (GVRK001)	May 10, 2019	Not Applicable
3.	Kapila Infra Project Private Ltd (RMTCK287)	April 10, 2019	Not Applicable

(vii) Pertinently, during the course of inspection MCX & NCDEX has also verified margin reporting on segmental basis and the said exchanges have not found any irregularity in MOFSL's system of reporting.

(viii) To substantiate our position, the margin reporting of aforesaid clients was re-verified by Chartered Accountant who opined that MOFSL has correctly reported balances of the aforesaid three (3) clients, as per available funds / securities balances in F & O segment (segmental reporting). Copy of the Certificate issued by the Chartered Accountant is enclosed as Annexure – "7".

(ix) *In view thereof, we strongly and vehemently deny the alleged violation of Circular dated August 01, 2011 issued by the SEBI (August 2011 Circular).*

(x) *During the course of hearing, the learned AO raised the following query :*

(Ref.: Minutes of hearing dated February 14, 2022 shared with MOFSL)

"The AO informed that with regard to the allegation pertaining to reporting and short collection of margin by the Noticee. NSE observed that there were multiple instances of transfer of funds through JVs from one segment to another without having sufficient credit. As a result, exchange considered consolidated balance of all the segment.

MOFSL's response to the said query is as under :

(i) *MOFSL's criteria for fund transfer from one segment to another is on the basis of :*

- *Funds available in a particular segment*
- *Credit for Sale available on T day where early pay-in of securities is done.*

(ii) *The inspection team has considered the following three (3) sample clients :*

- *Ganesh Trading Investment (RSH556) for April 24, 2019*
- *Vikas Jain (GVRK001) for May 10, 2019*
- *Kapila Infra Project Private Ltd. (RMTCK287) for April 10, 2019*

(iii) *In order to explain the fund flow entries /JV's, MOFSL has taken the relevant JV entries of the entire month (considered in its sample by the inspecting team) and provided detailed clarification in Annexure – "A" enclosed to present submissions.*

(iv) *On perusal of said Annexure – A, it can be demonstrated that the impugned transfers pertains to the following :*

		Table No. 1
1.	*Ganesh Trading Investment (RSH556)*	*Fund transfer from Cash Segment to F&O segment was made on the basis of sufficient balance available in client's ledger.*
2.	*Vikas Jain (GVRK001)*	*Fund transfer from Cash Segment to Currency segment was made on the basis of sufficient balance available in client's ledger.* *Mutual Fund units of Customer which was available in demat account was utilised for*

		Margin Purposes. Client has placed request for redemption. Post market order for MF units on May 8, 2019 & early pay-in was done, basis which fund transfer was made. *Fund transfer from F&O Segment to Currency segment / Cash segment was made on the basis of sufficient balance available in client's ledger.*
3.	*Kapila Infra Project Private Ltd (RMTCK287)*	*There were no fund transfer between segments during the entire month of April – 2019.*

(v) *Pertinently, the aforesaid transfers are genuine and are permitted under various Circulars issued by the exchange(s) from time to time.*

(vi) *In addition to above, MOFSL had a practice of 'segmental' reporting of margin of the clients as per the reporting norms allowed by the exchange (ref: NSE's Circular dated June 27, 2018). The said practice was consistently followed by MOFSL across all clients till the time relevant circular was in practice. The detailed clarification on consolidated level of margin status during the relevant dates is provided in* ***<u>Annexure – "B".</u>***

(vii) *Without prejudice to the aforesaid, MOFSL reiterates that all the three (3) instances highlighted in the Show Cause Notice are from a period when Margin Reporting Circular dated June 27, 2018 was in force. Hence, it is respectfully stated that as per exchange specified segmental reporting norms, there was no margin shortage:*

Table No. 2			
SI. No.	***Name of the client (Client Code)***	***Date considered by the NSE / inspecting team***	***Applicability of the Superseding Circular (w.e.f. July 29, 2019)***
1.	*Ganesh Trading Investment (RSH556)*	*April 24, 2019*	*Not Applicable*

2.	*Vikas Jain (GVRK001)*	*May 10, 2019*	*Not Applicable*
3.	*Kapila Infra Project Private Ltd (RMTCK287)*	*April 10, 2019*	*Not Applicable*

(viii) Additionally, during the course of inspection MCX & NCDEX has also verified margin reporting on segmental basis and the said exchanges have not found any irregularity in MOFSL's system of reporting.

(ix) Also, to substantiate MOFSL's position, the margin reporting of aforesaid clients was re-verified by Chartered Accountant who opined that MOFSL has correctly reported balances of the aforesaid three (3) clients, as per available funds / securities balances in F&O segment (ref: Annexure 7 on page no. 71 of the Reply)

III. <u>Clients Funding beyond stipulated time :</u>

<u>Reply of Noticee</u>

1. *With regards to the allegation that MOFSL has funded nine (9) clients beyond the stipulated time (T+2+5) , we would like to submit as under :*
   (i) As per the Risk Management Policy, MOFSL does not allow any fresh positions to any client if there is a net debit balance beyond fifth trading day, reckoned from the date of pay-in. Also, MOFSL has a set process for monitoring of ageing debits and granting of further exposure to customers as per SEBI guidelines. We would like to respectfully state that out of 3.87 lacs clients (approx.) that have traded during the inspection period, inspecting team has raised queries on mere nine (9) clients, which too have been explained herein below (ref. Table No. 8).
   (ii) The client wise clarification is as under :

		Table No. 7	
Sl. No.	***Client Code***	***Clarification / Remark***	***Underlying Evidence (Supporting)***
1.	*AGR339*	*The client was given further exposure on September 11,*	*Ledger of the client demonstrating that*

		2018 in capital market segment, whose settlement was due on T+2 days i.e 14th September, 2018. *Ageing debit of Rs. 2.85 crores as on September 11, 2018 was cleared on next trading day itself (i.e September 12, 2018 by client selling his stocks before settlement of trade executed on September 11, 2018 (exposure date). Hence, there was no funding by MOFSL.*	*ageing debit of Rs. 2.85 cores (approx.) as on September 11, 2018 was cleared on very next day (i.e September 12, 2018). Copy of the Ledger is enclosed as Annexure – "8"*
2.	*JDS005*	*No fresh exposure given to Client on the date of exposure (April 23, 2018). Only rollover of futures contract Position from April to May Expiry was allowed with no new position. NSE has allowed in the past such rollover of positions and the exchange does not consider the same as a 'fresh' exposure.*	*F&O Contract noted dated April 23, 2018. Copy of the Contract Note enclosed as Annexure –"9".*
3.	*AT6394*	*Exposure was given in derivative segment on the basis of sufficient collaterals.*	*Collateral statement of client on the date of exposure is enclosed as Annexure – "10"(collectively)*
4.	*AT6394*		
5.	*RSH2701*		
6.	*WHYDM539*		

7.	*JDZMB06*	*The client(s) had sufficient credit in currency segment ledger on the date of exposure (August 30, 2018 and November 26, 2018), and exposure was given in currency segment only.*	*Currency segment ledger of client is enclosed as Annexure – "11" (collectively)*
8.	*SOVG063*		
9.	*RMTCK287*	*The client had sufficient credit in F&O segment ledger on the date of exposure (i.e November 16, 2018), and exposure was given in F&O segment only. Further, no new position was allowed to client in currency segment. Debit bill on the said date in currency segment pertains to MTM loss bill of brough forward positions.*	*F&O Ledger and Currency Contract Ntoce on the date of exposure is enclosed as Annexure – "12" (collectively)*

(iii) It can be demonstrated hereinabove that :

(a) 1 client has rolled over same positions and hence no further exposure was allowed.

(b) In 3 cases exposure allowed only in segment where there was credit balance.

(c) 1 client had cleared ageing debit on next day of the impugned exposure before settlement of trades executed on exposure date.

(d) In remaining 4 cases exposure was allowed based on unencumbered client collaterals lying with MOFSL.

In view thereof, we deny the alleged violation of Clause 2.6 of the Annexure of Enhanced Supervision Circular r/w Clause 2(d) of the SEBI Circular dated June 22, 2017.

IV. *Discrepancies in CKYC Process*

Reply of Noticee

With regards to the allegation that MOFSL has not uploaded the CKYC details of clients, we would like to submit as under :

(i) *As per the regulatory norms, MOFSL is registered with CKYC and has been regularly uploading KYC data of new individual customers on CKYC portal which are after August -2016 i.e post coming into effect of the CKYC norms. Pertinently, majority of customers are old customers activated prior to 2016 (before regulatory requirement of CKYC came into effect).*

(ii) *In case of individual clients, as per the CERSAI portal, MOFSL was required to obtain additional information from respective clients (such as Place of Birth, County of Birth, Mothers Name, Maiden Name etc.), which was not available in existing KYC (SEBI prescribed format) data provided by said clients. Hence, the process of collecting the required information from each client & uploading the same to CKYC took some time.*

(iii) *From our end, MOFSL had written to all clients to provide required information so as to enable us to upload their data into CKYC. We have taken our best efforts and were trying to fetch the required information from our large existing client base and were uploading the data as and when information was received from customers. It was only in January 2019 when few of the 'mandatory' fields for CKYC were relaxed / made optional by the CERSAI portal, only then we were able to upload the requisite data.*

(iv) *In any case, we state that as on today we are fully compliant and client details have been uploaded on the KYC Portal which can be seen as under:*

	Table No. 8	
Sl. No.	***Particulars***	***Number of Clients***
1.	*Client details updated with CKYC*	*7141*
3.	*Account Closed as on date*	*57*
4.	*Code Suspended for transactions as required information not available*	*48*
	Total	*7,246*

Client-wise / individual details of the aforesaid clients along with status and CKYC registration number is enclosed as Annexure – "13".

(v) *It can be demonstrated hereinabove (Table No. 8) that we have completed CKYC compliance of all our active customers and taken action on few codes wherein the client did not provide the requisite detail. We respectfully submit that MOFSL had ensured CKYC compliance of 7141 out of 7246 (98%) clients & Have taken action for remaining cases. This demonstrates our bonafide and commitment to comply with regulatory provisions at all times.*

(vi) *In view thereof, we deny the alleged violation of SEBI Circular dated November 10, 2016 r/w SEBI Circular dated July 21, 2016.*

V. <u>Non-maintenance of evidence for client order placement :</u>

<u>Reply of Noticee</u>

With regards to the allegation that MOFSL has not followed the procedure of keeping evidence of client order through telephone in respect of nine (9) clients, we would like to submit as under :

(i) *As per regulatory requirements, MOFSL informed all our Branches & Authorised Persons (APs) to install recorded lines at their locations and to accept orders only after confirmation from customers through any of the verifiable means as per regulatory provisions. Copy of sample circular(s) issued by MOFSL to our Branches /APs is enclosed as Annexure -14 (collectively).*

(ii) *We submit that all our branches and majority of APs have installed recording systems across PAN India. We have created awareness and informed all our APs to comply with the regulatory guidelines in respect of placement of orders by the clients. MOFSL had tied up with a specialized vendor (Viz. NEXUS) to ensure that the call recording system is installed / updated at regular intervals.*

(iii) *The nine (9) instances flagged by the inspection team were registered with our three (3) of our Authorised Persons (APs) viz. Mr. Vuddagiri Naga Venkata S, Ms. Sangeeta Shaw and Mr. Jeetu Nelson. The current status is as under :*

		Table No. 9	
Sl. No.	***Authorised Person (AP) / Business Associate***	***Status***	***Underlying Evidence***
1.	*Mr. Vuddagiri Naga Venkata S*	*Recorded lines have been installed*	*Confirmation from the vendor for installation of recorded lines is enclosed as Annexure – "15"*
2.	*Ms. Sangeeta Shaw*	*The said AP has closed down its operation.*	*Closure proof is enclosed as Annexure – "16"*
3.	*Mr. Jeetu Nelson*	*The said AP has been suspended and MOFSL has filed arbitration against him.*	*Copy of Arbitration Petition is enclosed as Annexure – "17".*

(iv) *We wish to state that MOFSL has ensured compliance's including despatch of contract notes, margin statements and other regulatory statements as well as trade confirmation SMSs were issued to clients upon execution of transactions in client account. MOFSL has updated clients mobile / email id with Exchanges(s) and they also send trade related details to customers on their registered mobile /email. Accordingly, customers were well informed about transactions happening in their account and no adverse inference be drawn against us in this regard.*

(v) *In view thereof, we deny the alleged violation of Clause III and IV of the SEBI Circular dated September 26, 2017.*

VI. <u>Incorrect reporting of Weekly Enhanced Supervision Data :</u>

<u>Reply of Noticee</u>:-

With regards to the allegations that MOFSL has incorrectly reported data towards weekly reporting for 26th July 2019, we would like to furnish our point wise clarification as under :

(i) <u>Collaterals deposited with Exchanges in the form of Cash & Cash Equivalent (As per MOFSL – 577.05 Cr As per SCN – 579.14 Cr., Differene – 2.09 cr) :</u>

We respectfully submit that the above difference which is merely (0.004%) of total reporting, inspection team as considered Interest free Security Deposits & Trade Guarantee Fund of Rs. 2 Crore placed with various Exchanges/ Clearing Corporation. MOFSL was following the industry norm of non reporting these balances, since there was no circular / guidance note by the regulators Exchanges on the said aspect. In any case, post inputs from the inspecting team, MOFSL has started reporting the same in our weekly reporting.

(ii) *Collateral deposited with Clearing Member in the form of Cash & Cash equivalent (As per MOFSL – 695.59 cr, As per SCN – 536.56 cr, Difference – 159.03)*

The inspecting team has failed to consider the amount kept as a collateral by way of units of Reliance MFs unties. Detailed justification for inclusion of Reliance MFs units as collaterasl with clearing member is provided with the present response (paragraph no. 9 hereinabove).

(iii) *Total Credit Balance (As per MOFSL – 1003.21 cr. As per SCN – 1001.35 cr. Difference: 1.86 Cr) and Total Debit Balance(As per MOFSL – 1480.47 cr. As per Inspection Report – 1470.69 cr. Difference: 9.78 cr.*

The above mismatch in reporting which is only 0.002% of total creditors, & 0.007% of total debtors), we wish to state that while reporting, MOFSL considered the values lying in the Client Codes of custodian settled customers (No. of clients – 187) as well as our internal accounts /control accounts (No. of accounts – 17) which is not required to be considered as per Enhanced Supervision guidelines. This led to a miniscule difference in the values, as reported to the exchanges.

(iv) *Margin utilised for positions of credit balance Clients (As per MOFSL – 1166.30 cr. As per SCN – 1134,05 cr. Difference: 32.25 cr)*

The above difference which accounted for only 0.028% of total margin utilized amount, we state that at the relevant time, there were few clients who were neither debtors nor creditors (i.e zero balance clients), however they had margin requirement for their open position as required by the exchange. Consequently, as per industry practice, MOFSL reported such margin requirement against credit balance customers, which the inspecting team didn't take into consideration.

(v) *Free/ unblocked collateral deposited with CC (As per MOFSL – 377.22 cr. As per SCN – 397.24 cr. Difference: -20.02 Cr)*

		Table No. 10		
Exchange	*Reported by MOFSL (in cr)*	*As per Inspection Report*	*Diff (in cr)*	*MOFSL's Remark(s)*
MCX	*72.54*	*78.50*	*5.97*	*While reporting the values, warehouse receipts worth Rs. 6 crores was inadvertently missed out.*
ICICI FO	*360.44*	*360.47*	*0.03*	*The "Excess Effective Deposit Required" as per MG11 file was inadvertently missed out.*
BSE	*116.38*	*116.48*	*0.10*	*The 'Reserved Capital" in BSE MTR file was inadvertently missed out.*
NCDEX	*-6.96*	*6.96*	*13.93*	*The NCDEX calculates the "excess effective deposit required" (EEFD) by considering the following formula :* *EEFD = Margin required – Capital of Broker* *Accordingly, a negative figure indicates that there is an excess free collateral of a broker. As on July 26, 2019, the EEFD of MOFSL was "-69631552.94". While inputting the value of free collateral across exchanges, our staff inadvertently considered the above figure along with the*

				negative sign instead of considering only positive value due to which the inadvertent error creeped-in. *Copy of the NCDEX Capital File (MG 11) is enclosed as Annexure-"18"*
Total	***377.22***	***397.24***	***20.02***	*The referred difference is only 0.05% of total free / unblocked collateral deposited with CC / CM.*

(vi) Free / unblocked collateral deposited with CM (As per MOFSL – 405.83 cr. As per Inspection Report = 405.86 cr. Difference : - 0.03 cr.)

The said difference of Rs. 3 lacs (0.00007% of total free / unblocked collateral deposited with CM) rose in the "Excess Effective Deposits Required" (MG 11) file of the NSE. The said file is related to minimum balance maintained with Exchange for our clearing membership. As our F&O & Currency clearing activities are carried out by other clearing member ICICI Bank, the balance available in said file was erroneously missed out.

(vii) We wish to summarise that above are opertional miniscule errors (less than 0.1% of total value of reporting) in data collations as majaor information needs to be extracted from capital files of various segments/ exchanges which is compiled manually. Hence, only the reporting discrepancy is observed in few cases but actual collaterals lying with Exchanges remains unaffected. In view thereof, we deny the alleged violation of Clause 3.2 of the Annexure of Enhanced Supervision Circular.

9. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on February 14, 2022 vide hearing notice dated February 04, 2022. Noticee availed the opportunity of hearing granted to it on February 14, 2022, through WebEx platform. Authorised Representative (AR) appeared on behalf of

the Noticee. During the course of the hearing, the Noticee was requested to offer further comments on the allegation pertaining to reporting and short collection of margin by the Noticee wherein NSE observed that there were multiple instances of transfer of funds through JVs from one segment to another without having sufficient credit. As a result, of which the exchange considered consolidated balance of all the segment. The Noticee vide letter dated March 14, 2022 furnished its reply to the same, as mentioned at pt. x on pre-page under pt II. – Incorrect reporting / Short collection of margin.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have carefully perused the charges levelled against Noticee in the SCN and the material available on record. I have also perused the submissions made by Noticee in this regard. The issues that arise for consideration in the present case are:

I. Whether Noticee has violated the following provisions**:**

a) Section 23D of SCRA read with Clauses 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993(herein after referred to as "**Transaction Regulation Circular**"); and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016(herein after referred to as "**Enhanced Supervision Circular**")

b) SEBI Circular CIR/DNDP/2011 dated August 10, 2011.

c) Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

d) SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 read with SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016.

e) Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

f) Clause 3.2 of Annexure of SEBI Circular SEBI/HO/ MIRSD/ MIRSD 2/CIR/P/2016/95 dated September 26, 2016.

II. Does the violation, if any, attract monetary penalty under Section 23D of SCRA and Section 15HB of SEBI Act, 1992 **?**

III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

11. Before moving forward, it is pertinent to refer to the relevant provisions which are reproduced hereunder:-

a. ***Section 23 D of SCRA:*** *If any person, who is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

b. ***Clause 1 of Transactions Regulation Circular*** :

Clause 1: *It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account.*

c. Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016(herein after referred to as "Enhanced Supervision Circular")

Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges

3.1. Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.

3.2. Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

A- Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges

B- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

C- Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

D- Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)

E- Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

F- Aggregate value of Non-funded part of the BG across Stock Exchanges

P- Aggregate value of Proprietary Margin Obligation across Stock Exchanges

MC- Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges

MF- Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges

3.3. Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below:

3.3.1. Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:

Principle:

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)

Stock Exchanges shall calculate the difference i.e. G as follows -

$$G = (A+B)-C$$

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.

Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:

If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilized funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.

If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilized a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$$H = |G| - |D|$$

3.3.2. Funds of clients used for Margin obligation of proprietary trading:

Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)

If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).

If P > (G+E+F), then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

$$I = P - (G+E+F)$$

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilized towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilzation of clients' assets towards proprietary margin obligations.

3.3.3. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilized towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/ clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/ clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

If value of G is positive (i.e. A+B > C), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.

In such cases, (C-A)is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilized towards margin obligations of debit balance clients and proprietary margin obligations ,is calculated as under:

$$J = (C - A) - (MC + MF)$$

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations.

This value of J acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

3.4. *Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.*

3.5. Stock Exchanges shall put in place the aforesaid monitoring mechanism within three months from the date of this circular and carry out the monitoring of clients' funds for all stock brokers, except for those who are carrying out only proprietary trading and/or only trading for institutional clients.

3.6. Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time

e. ***SEBI Circular CIR/DNDP/7/2011 dated August 10, 2011***

" it has been decided that Stock Exchanges shall levy penalty specified hereunder on trading members for short-collection/non-collection of margins from clients in Equity and Currency Derivatives segments:

For each member	
'a'	***Per day Penalty as %age of 'a'***
(<Rs. 1 lakh) And (<10% of applicable margin)	*0.5*
(equal to or > Rs. 1 lakh0 Or (equql to or > 10% of applicable margin)	*1.0*

Where a= Short-collection /non-colletion of margins per client per segment per day

2. If short/non-collection of margins for a client continues for more than 3 consecutive days, then penalty of 5% of the shortfall amount shall be levied for each day of continued shortfall beyond the 3rd day of shortfall.

3. If short/non-collection of margins for a client takes place for more than 5 days in a month, then penalty of 5% of the shortfall amount shall be levied for each day, during the month, beyond the 5th day of shortfall.

4. Notwithstanding the above, if short collection of margin from clients is caused due to movement of 3% or more in the index (close to close value of Nifty/Sensex for all equity derivatives) and in the underlying currency pair (close to close settlement price of currency futures, in case of all currency derivatives) on a given day, (day T), then, the penalty for short collection shall be imposed only if the shortfall continues to T+2 day.

5. All instances of non-reporting shall amount to 100% short collection and the penalty as applicable shall be charged on these instances in respect of short collection.

6. If during inspection it is found that a member has reported falsely the margin collected from clients, the member shall be penalized 100% of the falsely reported amount along with suspension of trading for 1 day in that segment.

7. The penalty shall be collected by the Stock Exchange within five days of the last working day of the trading month and credited to its Investor Protection Fund.

f. *Clause 2.6 Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2CIR/P/2016/95 dated September 26, 2016 read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.*

***Clause 2.6** of the above circular : Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in.*

***Clause 2(d)** of the above circular : Clause 2.6 stands modified as, "Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in, except , in accordance with the margin trading facility provided vide SEBI circular CIR/MRD/DP/54/2017 dated June 13, 2017* *or as may be issued from time to time." This clause would be effective from August 1, 2017.*

g. *SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 read with SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016.*

<u>CIR/MIRSD/120/2016 dated November 10, 2016</u>

1. *This has reference to SEBI circular no. CIR/MIRSD/66/2016 dated July 21, 2016 on operationalisation of Central KYC Records Registry (CKYCR) Wherein the registered intermediaries were directed to upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 01, 2016.*
2. *Government of India, vide its letter dated October 04, 2016, has directed as follows with regard to KYC details of existing and new individual clients :*
   a. *Registered intermediaries have to update their IT systems as well as register all new accounts of individuals in accordance with the CKYCR template, mandatorily by October 31, 2016.*
   b. *Mutual funds and Intermediaries other than mutual funds may follow the following time lines in respect of uploading KYC data of the existing individual clients with CKYCR.*
      i. *Mutual funds may ensure 30% completion of uploading of existing KYC data by November 30, 2016, another 30% of KYC data by January 31, 2017 and the rest 40% data by March 31, 2017.*
      ii. *Intermediaries other than mutual funds may ensure 50% completion of uploading of existing KYC data by November 30, 2016 and the remaining 50% of KYC data by December 31, 2016.*

<u>Circular CIR/MIRSD/66/2016 dated July 21, 2016</u>

Sub: ***Operationalisation of Central KYC Records Registry (CKYCR)***

1. *Please refer to SEBI circulars no. CIR/MIRSD/16/2011 dated August 22, 2011, MIRSD/SE/Cir-21/2011 dated October 5, 2011 and CIR/MIRSD/13/2013 dated December 26, 2013 on uniform Know Your Client („KYC") norms, prescribing a standard account opening form (AOF). AOF has been divided in 2 parts - Part I contains the basic KYC details of the investor used by all SEBI registered intermediaries.*

2. *Government of India has authorized the Central Registry of Securitization and Asset Reconstruction and Security interest of India (CERSAI), set up under sub-section (1) of Section 20 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to act as, and to perform thefunctions of, the Central KYC Records Registry under the PML Rules 2005,including receiving, storing, safeguarding and retrieving the KYC records in digital form of a "client", as defined in clause (ha) sub-section (1) of Section 2 of the Prevention of Money Laundering Act, 2002 (Copy of the Gazette notification No.S.O. 3183(E) dated November 26, 2015 is attached as Annexure 1).*
3. *As per the 2015 amendment to PML (Maintenance of Records) Rules, 2005 (the rules), every reporting entity shall capture the KYC information for sharing with the Central KYC Records Registry in the manner mentioned in the Rules, as per the KYC template for „individuals" finalised by CERSAI.*
4. *Accordingly, the KYC template finalised by CERSAI shall be used by the registered intermediaries as Part I of AOF for individuals. The KYC template for "individuals" and the "Central KYC Registry Operating Guidelines 2016" for uploading KYC records on CKYCR finalised by CERSAI are enclosed herewith as Annexure 2 and Annexure 3for your reference and necessary action. In this regard, it is clarified that the requirement for Permanent Account Number (PAN) would continue to be mandatory for completing the KYC process.*
5. *The "live run" of the CKYCR has started with effect from July 15, 2016 in a phased manner beginning with new „individual accounts". Further, 'Test Environment" has also been made available by CERSAI for the use of the reporting entities.*
6. *In the first phase, the registered intermediaries shall upload the KYC data with CKYCR, in respect of all individual accounts opened on or after August 1, 2016, wherever KYC is required to be carried out as per the circulars issued by SEBI from time to time and accordingly, shall take steps to prepare their systems for uploading the KYC data"*

h. *Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.*

III. To further strengthen regulatory provisions against un-authorized trades and also to harmonise the requirements across markets, it has now been decided that all *brokers shall execute trades of clients only after keeping evidence of the client placing such order, it could be, inter alia, in the form of:*

a. Physical record written & signed by client,

b. Telephone recording,

c. Email from authorized email id,

d. Log for internet transactions,

e. Record of SMS messages,

f. Any other legally verifiable record.

When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades.

IV. Further, wherever the order instructions are received from clients through the telephone, the stock broker shall mandatorily use telephone recording system to record the instructions and maintain telephone recordings as part of its records."

i. *Clause 3.2 of Annexure of SEBI Circular SEBI/HO/ MIRSD/ MIRSD 2/CIR/P/2016/95 dated September 26, 2016* (***as mentioned at pt c above)***

I note that Inspection findings are based on analysis of samples and test checking of various books and other records maintained by the Noticee, as well as written/oral submissions of the Noticee & its officials to the inspection team. Consequently, the instances of irregularities/observations pointed out in inspection report are illustrative in nature and are not all-inclusive.

Issue I: Whether Noticee has violated the provisions as enumerated under paragraph 9:

12. I will now proceed to deal with the aforementioned allegations levelled against Noticee in the SCN, the submission made by Noticee and available documents in this regard and record my observations/ findings as under:

I. Mis-utilization of client's funds

a) It has been allegedthat value of 'G" is negative in 11 instances out of the total of 52 sample dates which indicates that the funds of the credit balance clients have been used for purpose of debit balance clients or own purpose.

Date	Total fund balance available in all client bank accounts, including the settlement account, maintained by the stock broker across stock exchanges	Collateral deposited with clearing corporation/ clearing member in form of Cash and Cash Equivalents (Fixed deposit (ED), Bank guarantee (BG), etc.) across all Stock Exchanges. Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered	Total credit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills for clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligation)	Total debit balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)	Difference between total available fund & ledger credit balance of clients (G=A+B-C)
	A	B	C	D	G
07-May-18	11.61	731.75	856.66	1,229.16	**-113.30**
08-May-18	30.98	732.03	867.20	1,204.51	**-104.20**
26-Jul-18	11.05	650.55	887.80	959.02	**-226.20**
06-Aug-18	144.29	809.63	1,033.31	1,016.06	**-79.39**
31-Aug-18	34.71	846.25	1,026.73	1,102.39	**-145.77**
17-Jan-19	47.38	807.41	955.49	986.83	**-100.70**
29-Mar-19	94.75	754.15	1,023.62	1,247.17	**-174.73**
01-Apr-19	149.41	822.30	1,118.14	1,189.55	**-146.43**
09-Apr-19	61.30	850.64	1,091.90	823.42	**-179.96**
10-Apr-19	50.30	901.49	1,094.77	872.31	**-142.98**
11-Apr-19	117.89	903.03	1,121.38	854.14	**-100.45**

b) It is noted from the above table that "G" in 11 instances out of the total of 52 dates was negative in the range of Rs. 79 Crores and 226 Crores. The average amount alleged to be misused was Rs. 137.65 Crores.

c) Noticee in its reply has stated that while calculating the value of "G" the inspecting team has failed to consider the amount held as Mutual Fund Units viz. Reliance Medium Term Fund Direct Plan (later known as, Nippon India Corporate Bond Fund) and Reliance Banking & PSU Debt Direct Growth (later known as, Nippon India Banking and PSE Debt Fund). Considering the amount invested in the said MF units, the value of "G" is positive and there is no shortage of funds. They have submitted a revised table where after considering the Mutual Fund units and stated that once the value of Reliance MFs are considered the said deficit comes down to Rs. 27.96 cr. Further, Rs. 50 crores was transferred from client bank account for subscription of UTI Mutual Fund based on which UTI units were allotted on the same in demat account 1201900005837578, tagged as MOFSL Client demat Account. These mutual funds (UTI Liquid Cash Plan Direct Plan Growth) were placed with clearing member under cash component on very next day i.e 27th July 2018. The said mutual funds from a part of cash component as per the Circular issued by NCCL. Thus, Rs. 50 crores was available with trading member in the form of cash equivalent MF in client demat account of MOFSL on July 26, 2018.

d) I note that the SEBI Circular dated September 26, 2016 prescribed method for calculation of "G". It states that "aggregate value of collateral deposited with clearing corporations and / or clearing member in form of Cash and Cash Equivalents (Fixed deposit(FD), Bank guarantee (BG) etc.) (across Stock Exchanges) are to be considered in calculating 'G'". Further on verification of the list of approved securities issued by NSE Clearing Limited Circular Ref. Nos. 887/2018, 889/2018, 892/2018, 905/2018, 911/2019, 912/2019 for May-18, July-18, Aug-18, Jan-19, Mar-19 and April-19 respectively for 11 negative days, it was observed that Reliance Medium Term Fund Direct Plan Growth (INF204K011C15) and Reliance Banking & PSU Debt Direct Growth (INF204KA1U53) are declared under non cash component. From the documents available before me it is clear that Reliance Medium Term Fund

Direct Plan and Reliance Banking & PSU Debt Direct Growth Reliance being non cash component are not to be considered for calculation of G component. Therefore, the Noticee's submission to consider these mutual fund as cash equivalent is untenable.

e) I also note that the Noticee has accepted that BMC was incorrectly included in the calculation of collateral. The Noticee has also accepted that Motital Oswal Most Focussed Midcap 30 & Motilal Oswal Most Focussed Multicap 35 which were their proprietary investments were incorrectly included in the cash components of collateral.

In view of the above, I find that in all 11 instances there has been misuse of clients funds. Thus the allegation that the Noticee has violated Section 23D of SC(R) Act, 1956 read with Clause 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, stands established.

II. **<u>Incorrect reporting / Short collection of Margin :</u>**

a) It has been alleged that the Noticee incorrectly reported margin to exchange in the F&O segment where there was shortfall in case of 3 clients amounting to Rs. 16.84 Crores as tabled below :

Sl. No.	Name of the Client (Client Code)	Date considered by the NSE/Inspecting team	Amount (Rs.)
1	Ganesh Trading Investment (RSH556)	April 24, 2019	15,89,38,937.01
2	Vikas Jain (GVRK001)	May 10, 2019	1,42,231.74
3	Kapila Infra Project Private Ltd. (RMTCK287)	April 10, 2019	93,09,578.47

b) It was observed that in case of above clients there were multiple instances of transfer of funds through JVs from one segment to another without having sufficient credit hence the consolidated balance have been considered in all segments for the above clients. Thus the reporting by the Noticee was alleged to be incorrect.

c) Noticee submitted that all the three instances (April 24, 2019 , May 10, 2019 and April 10, 2019) were from a period when the margin reporting circular dated July 27, 2018 was in force which reads as under :

"Members can use segment-wise balances or consolidated (all segments) financial balances of the Exchange for the purpose of collection and reporting Margin/MTM lossess, however the practice followed shall be followed consistently for a minimum period of 1 financial year".

d) Further, the Noticee stated that as per Circular dated July 3, 2019, the superseding circular on margin reporting mandated that the trading members should consider 'consolidated' fund balances across all segments and exchanges, as stated below:

"Members shall consider the free & unencumbered consolidated balance across all segments and Exchanges (including Commodities but excluding balances in the client's Margin Trading (MTF) account) for the purpose of collection & reporting Margin /MTM losses of the client. This shall be in supersession to point no. 5 of Annexure-A of NSE Circular NSE/INSP/38154 dated June 27, 2018".

e) I note that the Noticee has submitted that in case of Client Ganesh Trading Investment (RSH556) funds were transferred from cash segment to F& O segment and in case of Client Vikas Jain (GVRK001) funds were transferred from cash segment to currency segment as sufficient balances were available in the said clients' ledger. However, I observe from the documents submitted by the Noticee that there was indeed debit balance in the Cash Margin (i.e cash segment) hence sufficient credit was not there in all segments when Noticee transferred funds through JVs which Noticee should not have done.

In view of the above, the allegation against the Noticee that it has violated SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011, stands established.

III. <u>Clients Funding beyond stipulated time :</u>

a) It has been alleged that the Noticee had given exposure to 9 clients beyond T+2+5 days and the total amount funded was Rs. 24.52 crores :

Sl. No.	***Client Code***	***Clarification / Remark***	***Underlying Evidence (Supporting)***
1.	*AGR339*	*The client was given further exposure on September 11, 2018 in capital market segment, whose settlement was due on T+2 days i.e 14th September, 2018.* *Ageing debit of Rs. 2.85 crores as on September 11, 2018 was cleared on next trading day itself (i.e September 12, 2018 by client selling his stocks before settlement of trade executed on September 11, 2018 (exposure date). Hence, ther was no funding by MOFSL.*	*Ledger of the client demonstrating that ageing debit of Rs. 2.85 cores (approx.) as on September 11, 2018 was cleared on very next day (i.e September 12, 2018). Copy of the Ledger is enclosed as Annexure – "8"*
2.	*JDS005*	*No fresh exposure given to Client on the date of exposure (April 23, 2018). Only rollover of futures contract Position from April to May Expiry was allowed with no new position. NSE has allowed in the*	*F&O Contract noted dated April 23, 2018. Copy of the Contract Note enclosed as Annexure –"9".*

		past such rollover of positions and the exchange does not consider the same as a 'fresh' exposure.	
3.	*AT6394*	*Exposure was given in derivative segment on the basis of sufficient collaterals.*	*Collateral statement of client on the date of exposure is enclosed as Annexure – "10"(collectively)*
4.	*AT6394*		
5.	*RSH2701*		
6.	*WHYDM539*		
7.	*JDZMB06*	*The client(s) had sufficient credit in currency segment ledger on the date of exposure (August 30, 2018 and November 26, 2018), and exposure was given in currency segment only.*	*Currency segment ledger of client is enclosed as Annexure – "11"*
8.	*SOVG063*		
9.	*RMTCK287*	*The client had sufficient credit in F&O segment ledger on the date of exposure (i.e November 16, 2018), and exposure was given in F&O segment only. Further, no new position was allowed to client in currency segment. Debit bill on the said date in currency segment pertains to MTM loss bill of brough forward positions.*	*F&O Ledger and Currency Contract Ntoce on the date of exposure is enclosed as Annexure – "12"*

b) In case of Client AGR339, the Noticee has submitted that the client was given further exposure on September 11, 2018 in capital market segment, whose settlement was due on T+2 days i.e 14th September, 2018.Ageing debit of Rs. 2.85 crores as on September 11, 2018 was cleared on next trading day itself (i.e September 12, 2018 by client selling his stocks before settlement of trade executed on September 11, 2018 (exposure date). Hence, there was no funding by MOFSL.

However, on perusal of the ledger of the client provided by the Noticee, I note that the client had an ageing debit of Rs. 2.85 Crores, as on August 31, 2018. Despite having a debit balance , the Noticee had given the client further exposure on September 11, 2018 which is not in compliance with SEBI Circular dated September 26, 2016 read with Clause 2.6 of SEBI Circular dated June 22, 2017 which states "*Stock Broker shall not grant further exposure to the client when debit balance arise out of the failure to pay the required amount and such debit balance continue beyond the fifth trading day ….*".

Though the Noticee states that the exposure given on September 11, 2018 was cleared on September 12, 2018, I note that the Noticee should not have in the first place given exposure to the client on September 11, 2018 without clearing the debit balance of Rs. 2.85 Crores.

In view of the same, I am not inclined to accept the reply of the Noticee that there was no funding by the Noticee.

c) With regard to Client JDS005, the Noticee has submitted that no fresh exposure was given to Client on the date of exposure (April 23, 2018). Only rollover of futures contract Position from April to May Expiry was allowed with no new position. NSE has allowed in the past such rollover of positions and the exchange does not consider the same as a 'fresh' exposure. In view of the exchange not considering the rollover of position as a fresh contract , I am inclined to agree with the explanation of the Noticee.

d) With regard to Client AT6394 (2 instances), RSH2701 & WHYDM539, I find that the submission of the Noticee that exposure was given in derivative segment on the basis of sufficient collaterals is not acceptable since collaterals cannot be considered while giving exposure to client. Further, before giving further exposure to the clients, the debit balance has to be cleared. The Enhanced Circular read with SEBI Circular dated June 22, 2017, clearly states that the broker is prohibited from granting further exposure to the clients if clients fail to pay the required amount and such balance continues beyond the 5th trading day, as reckoned from the date of pay-in except in accordance with margin trading facilities provided by the broker. Hence the reply of the Noticee is unacceptable.

e) With regard to Client JDZMB06 & SOVG063, the Noticee has submitted that the clients had sufficient credit in currency segment ledger on the date of exposure (August 30, 2018 and November 26, 2018) and exposure was given in currency segment only. With regard to client RMTCK287, the Noticee has submitted that the client had sufficient credit in F & O segment ledger, on the date of exposure was given in F&O segment only. Further, no new position was allowed to client in currency segment. Debit bill on the said date in currency segment pertains to MTM loss bill of brought forward positions.

I note that as per the Enhanced Circular read with SEBI Circular dated June 2017, the broker is prohibited from granting further exposure to the clients if clients fail to pay the required amount and such balance continues beyond the 5th trading day, as reckoned from the date of pay-in except in accordance with margin trading facilities provided by the broker.

Further, I note that SEBI Circular does not distinguish between Currency segment and F & O segment. The client should have credit balances across exchanges / segments. As the client had a debit balance, the Noticee should have ensured the debit balance was first cleared before giving the client further exposure. However, the Noticee failed to do so.

Therefore, the allegation against the Noticee of funding the clients beyond the stipulated date, stands established, in respect of b, d and e.

In view of the above, it is established that the Noticee had violated Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/CIR/P/2016/95 dated

September 26, 2016 read with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

IV. **Discrepancies in CKYC Process :**

a) It is alleged that the Noticee had not uploaded CKYC details of 7246 clients in the CERSAI portal. I note that the Noticee has submitted that the process of collecting the required information from each client and uploading the same on the CERSAI portal took some time. I also note that as on date, out of the 7,246 clients registered with the Noticee, in 7141 cases, client details have been updated with the CKYC, in 57 cases, accounts were closed and in the remaining 48 cases, code were suspended for trading as required information was not available. While the Noticee has rectified the lapses post the inspection , during the inspection period there was non –compliance which has not been denied by the Noticee.

In view of the same, I find that the allegation, that Noticee has violated Clause 1 (i) of SEBI Circular MIRSD/Cir-26 /2011 dated December 23, 2011 stands established.

V. **Non-maintenance of evidence for client order placement :**

a) It has been alleged that in case of 9 clients, the Noticee failed to keep appropriate evidences of client order placement. The Noticee contended that the 9 clients in whose case order placing recording was not kept were clients of the Noticee’s 3 Authorised Persons (APs) where order recording were not available due to certain issues like suspension, arbitration and closure of operation. I note that SEBI Circular dated September 26, 2017 clearly states that brokers shall exercise trades of clients only after keeping evidence of the client placing order.

b) Therefore, I note that the responsibility to maintain order placement recording lies with the Noticee. The Noticee should have ensured that all its APs have the required systems in place to be complaint with SEBI circulars.

In view of the above, it is established that the Noticee had violated Clause III & IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.

VI. **Incorrect reporting of Weekly Enhanced Supervision Data :**

It has been alleged that the Noticee had incorrectly reported the data towards weekly monitoring of client funds for the below mentioned:

a) Collaterals deposited with Exchanges in the form of Cash & Cash Equivalent

b)_Collaterals deposited with Clearing Member in the form of Cash & Cash Equivalent

c) Total Credit Balance / Total Debit Balance

d) Margin utilized for positions of credit balance clients

e) Free / unblocked collateral deposited with Clearing Corporation(CC)

f) Free / unblocked collateral deposited with Clearing Member(CM)

The details of the same are as given below:

Particulars	**Amount submitted towards Enhanced Supervision as on 26.07.19 (in Crs.)**	**Amount observed during inspection (in Crs.)**	**Difference**
Collateral deposited with exchanges in the form of Cash and Cash equivalents	577.05	579.14	-2.09
Collateral deposited with Clearing Member in the form of Cash and Cash equivalents.	695.59	536.56	159.03
Total Credit balance of all clients	1003.21	1001.35	1.86

Total Debit balance of all clients	1480.47	1470.69	9.78
Margin utilized for positions of Credit Balance Clients.	1166.30	1134.05	32.25
Free / unblocked collateral deposited with Clearing Corporation	377.22	397.24	-20.02
Free / unblocked collateral deposited with Clearing Member	405.83	405.86	-0.03

1. **<u>Collaterals deposited with Exchanges in the form of Cash & Cash Equivalent</u>**:
   With regard to the data regarding collaterals deposited with the exchanges submitted by the Noticee, I find that there is a shortage of Rs 2 crores in reporting of the collaterals deposited by the Noticee. In its reply to the SCN, the Noticee has stated that the SEBI inspection team did not consider Interest Free Security Deposit & the Trade Guarantee Fund balances. I note the Noticee in its preliminary reply stated that it had missed out in the calculation of collateral while reporting to the exchange. Further, in its reply to the SCN, the Noticee has submitted that it has started reporting the same in its weekly reporting. The Noticee has thus accepted the shortfall difference in their reporting to the exchange.

2. **<u>Collaterals deposited with Clearing Member in the form of Cash & Cash Equivalent</u>** :
   Noticee submitted the inspecting team had failed to consider the amount kept as a collateral by way of units of Reliance MFs units.

   I note that the Noticee has counted non-cash component (Reliance mutual fund units) in sum of cash and cash equivalent leading to over reporting of Rs. 159.03 cr to the exchange. I find that as per the list of approved securities issued by NSE Clearing, the said mutual funds do not fall under of Cash or Cash

Equvialvent category and therefore should not have been considered by the Noticee as collaterals deposited with Clearing Member. The Noticee's submission to consider these mutual fund units as cash equivalent is therefore untenable.

3. **Total Credit Balance / Total Debit Balance** :

   I find that the total credit balance and the total debit balance reported to the exchange by the Noticee was on the higher side to the extent of a difference of Rs. 1.86 Cr & and Rs. 9.78 Cr. respectively.

   I note that the Noticee has admitted to have considered the values lying in the Client Codes of Custodian Settled Customers (No. of Clients – 187) as well as its internal accounts /control accounts (No. of accounts- 17), which is not required to be considered as per the Enhanced Supervision guidelines.

4. **Margin utilized for positions of credit balance clients** :

   I note that the Noticee has over-reported the margin utilized for positions of its credit balance clients to the extent of Rs. 32.25 Crores. I also note that the Noticee has admitted that the excess reporting was because in addition to margin requirement of credit balance clients, it had also considered margin requirement of few clients who had zero ledger balance, but had margin requirement for their open position as required by the exchange.

5. **Free / unblocked collateral deposited with CC** :

   I note that the Noticee has submitted that while reporting the values, warehouse receipts worth Rs. 6 Crores, the 'Excess Effective Deposit Required' as per MG11 file and the 'Reserved Capital' in BSE MTR file was inadvertently missed out. Further, while inputting the valve of free collateral across the exchanges, its staff inadvertently considered an incorrect figure due to which the inadvertent error creeped-in and therefore there was a shortfall difference on their part by Rs. 20.02 Crores .

I note that the Noticee has accepted that the difference was due to their missing out on reporting of values of certain collaterals.

6. **<u>Free / unblocked collateral deposited with CM</u>** :
The Noticee has submitted that the shortfall difference of Rs. 0.03 Crores on their part while reporting the free /unblocked collateral deposited with CM arose in the "Excess Effective Deposits Required" (MG11) file of the NSE, which is related to the minimum balance maintained by the Exchange for their clearing membership and the balance available in the said file was erroneously missed out.
I note the Noticee has accepted the error on their part, while reporting the free/unblocked collateral deposited with the CM.

In view of the above, it is established that the Noticee had violated the provisions of Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

<u>Issue No. II: Does the violation, if any, attract monetary penalty under Section 23D of SCRA, Section 15HB of SEBI Act</u>

13. It has been established in the foregoing paragraphs that Noticee has violated the following provision:-
    1. Section 23D of SCRA read with Clauses 1 of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993(herein after referred to as "**Transaction Regulation Circular**"); and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016(herein after referred to as "**Enhanced Supervision Circular**")
    2. SEBI Circular CIR/DNDP/2011 dated August 10, 2011.
    3. Clause 2.6 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2CIR/P/2016/95 dated September 26, 2016 read

with Clause 2(d) of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017.

4. SEBI Circular CIR/MIRSD/120/2016 dated November 10, 2016 read with SEBI Circular CIR/MIRSD/66/2016 dated July 21, 2016.
5. Clause III and IV of SEBI Circular CIR/HO/MIRSD/MIRSD2/CIR/P/2017/108 dated September 26, 2017.
6. Clause 3.2 of Annexure of SEBI Circular SEBI/HO/ MIRSD/ MIRSD 2/CIR/P/2016/95 dated September 26, 2016.

In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

Therefore, the aforesaid violations committed by Noticee attract monetary penalty under Section 23D of SCRA and Section 15HB of the SEBI Act which read as follows:
Section 23 D of SCRA- *Penalty for failure to segregate securities or moneys of client or clients: If any person, who is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*
Section 15HB of SEBI Act: - *Penalty for contravention where no separate penalty has been provided: Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

<u>Issue No. III</u>*: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty*?

14. While determining the quantum of penalty under Section 23D of SCRA & Section 15HB of the SEBI Act have to be given due regard:

Factors to be taken into account by adjudicating officer under SCRA

23J. *While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation-For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

Factors to be taken into account by adjudicating officer under SEBI Act

15J. *While adjudging the quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation-For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. Further, as per the available records, it is observed that Noticee has been penalised earlier for violation of Section 23 D of the SCR Act, vide order dated February 28, 2020 . Hence violation if of repetitive nature. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of the SCRA & SEBI Act which it failed to do. Such disregard for the provisions of law governing the functioning of such intermediaries, calls for an appropriate penalty which should act as a deterrent.

ORDER

15. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 23J of SCRA and Section 15HB of SEBI Act I, in exercise of the powers conferred upon me under Section 23-I of the SCRA, Section 15HB of the SEBI Act hereby impose the following penalty on Noticee viz. Motilal Oswal Financial Services Limited

Sr. No.	Penalty	Under the provisions of
1	Rs. 20,00,000/-	Section 23D of SCRA
2	Rs. 5,00,000/-	Section 15HB of SEBI Act
Total	**Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)**	

I am of the view that the said penalty is commensurate with the violations committed by Noticee.

16. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in

17. Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. Noticee shall provide the following details while forwarding DD/ payment information:

    i. Name and PAN of the entity (Noticee)
    ii. Name of the case / matter
    iii. Purpose of Payment – Payment of penalty under AO proceedings
    iv. Bank Name and Account Number
    v. Transaction Number

18. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

19. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to Noticee viz. M/s. Motilal Oswal Financial Services Limited

Date: April 29, 2022
Place: Mumbai

BARNALI MUKHERJEE
Adjudicating Officer